IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6260 of 2001

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

PANCHMAHAL VADODARA GRAMIN BANK

Appearance:

MR KB PUJARA for Petitioner

MR UDAY R BHATT for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 13/08/2004

ORAL JUDGEMENT

1.0 By this petition the petitioner has challenged the order passed by the respondent no.3 dated 17.2.2001 confirming the order of punishment passed by the Disciplinary Authority on 6.12.2000 and rejecting the appeal filed by the petitioner.

2.0 The petitioner was selected for the post of Officer in the respondent no.1 Bank by appointment order

dated 16.4.1988 and the petitioner joined the service on 25.4.1988.

2.1 When the petitioner was serving at Ram Patel Na Muvada Branch of the respondent Bank, on 20.5.1998, he was called upon to submit explanation and to show cause as to why disciplinary action should not be initiated against him for the alleged acts of omission and commission committed by him during the period from 25.3.1996 to 21.6.1997, while he was working as Manager at Chundai Branch of the Bank.

2.2 The substance of the notice is that the petitioner had extended loan to borrowers by violating set norms and practice of the bank; the end use of credit and government's fund was not observed, the loan proposals were not properly scrutinised and credit worthiness of the applicants was not ensured and therefore, the petitioner had shown gross negligence towards the discharge of your duties. The petitioner replied to the notice by his letters dated 30.5.1998 and 30.7.1998 denying the allegations and misconduct levelled against him.

2.3 Thereafter a chargesheet was issued to the petitioner on 26.4.1999 and the petitioner has replied to the chargesheet by his letter dated 2.5.1999. Subsequently by letter dated 2.8.1999 the point no.7 of the chargesheet was deleted by the respondent Bank.

2.4 One Mr.G.A. Suthar, Senior Manager, Head Office, was appointed as Enquiry Officer. The petitioner has submitted his written arguments on 9.10.2000 and 25.10.2000. After the inquiry Inquiry Officer submitted his report copy of which was supplied to the petitioner.According to the said report, the point nos.1 to 4 and 8 to 10 were held proved, point no.5 was held not proved and point no.6 was held partly proved and partly not proved. Point no.7 was already deleted from the chargesheet as mentioned above.

2.5 The petitioner was given a personal hearing before the respondent no.3 on 22.11.2000 and the petitioner has attended the hearing. In pursuance of the same the respondent no.2 passed order dated 6.12.2000 dismissing the petitioner from service with immediate effect.

2.6 Against the said order the petitioner preferred an appeal before the respondent no.3 Appellate Authority. The Appellate Authority vide order dated 17.2.2001

rejected the appeal and confirmed the order dated 6.12.2000 of the Disciplinary Authority. It is against the aforesaid orders the present petition has been filed.

3.1 Learned counsel for the petitioner submitted that issuance of chargesheet and holding of inquiry against the petitioner itself was unjustified and unwarranted inasmuch as the petitioner had not himself sanctioned any loans at the Chundadi Branch, but he had merely renewed and/or disbursed the amount of loans which were already sanctioned by his predecessor.

3.2 He submitted that the petitioner's predecessor Mr. L.K. Parmar had functioned as Manager of the Chundadi Branch from 30.10.1990 to 11.4.1996 and during his long tenure he had committed the acts of omission and commissions.

3.3 The petitioner was there for only about 15 months and therefore it cannot be said that the petitioner is responsible for the alleged acts of omission and commissions. According to him, the petitioner had no reasons to suspect or doubt the revenue records/papers as submitted by revenue authorities and available at Branch with loan documents/files.

3.4 Mr. Pujara submitted that though certain documents were demanded by the petitioner the same were not supplied to the petitioner. The petitioner also contended that no opportunity was given to the petitioner before imposing the punishment, especially the quantum of punishment.

4.1 Mr. Pujara contended that the respondents have completely overlooked the blotless service record of the petitioner for more than 12 years since 25.4.1988 at several branches of the Bank. He submitted that there is no allegation of financial malpractice of misappropriation of the Bank's funds. He further submitted that extreme penalty of dismissal has been imposed upon the petitioner which is certainly disproportionate to the alleged misconduct of the petitioner. He submitted that the petitioner had a long tenure in service; that he has not pocketed any amount; that no loss has been caused to the bank and therefore the impugned order is required to be quashed and set aside.

4.2 Mr. Pujara has also contended that there are no charges against the petitioner with regard to misappropriation of money of the bank and even on this

ground the penalty imposed upon the petitioner is harsh and disproportionate to the charges levelled against him.

4.0 Mr. Uday Bhatt, learned counsel for the respondents submitted that the punishment has been imposed upon the petitioner after the departmental inquiry and the petitioner was given just, proper and adequate opportunity to be heard at the time of departmental inquiry and before the appellate authority. He submitted that there is enough evidence to arrive at the findings recorded by the Inquiry Officer and the punishment so inflicted is proportionate and proper.

5.0 Mr. K.B. Pujara for the petitioner has relied upon a decision of the Apex Court in the case of Kailash Nath Gupta Vs. Enquiry officer, Allahabad Bank, reported in 2003 AIR SCW 213. In that case disciplinary proceedings were initiated against the Officer for certain alleged irregularities in sanctioning loans. After holding enquiry, the services of the said officer was removed from service. The point raised in the aforesaid decision is with regard to awarding of disproportionate punishment. After considering the facts and circumstances of the case the Supreme Court in para 11 of the said decision held as under:

> "11. In the background or what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certain the Court can direct re-consideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject matter of his removal from service. The stand oft he appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the bank (which he quantifies at about Rs.46,000/-) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service."

A perusal of the aforesaid decision would show that the facts of the said case are similar to the present one. Therefore, I am of the opinion that the aforesaid decision clearly supports the case of the petitioner. The learned counsel for the respondent is unable to contest this proposition.

5.1 Mr. Pujara has relied upon a decision of this Court in the case of Jagdishchandra Maganlal Trivedi Vs. State Bank of India, reported in 2004(2) GLH 514. Para 10 of the said judgement reads as under:

"10. In kailash Nath Gupta Vs. Enquiry Officer (RK Raj) Allahabad Bank and others [2003 Lab. IC 2290], in a very identical case where loan has been disbursed without sufficient security by the officer, the Apex Court observed that some procedural irregularity cannot be termed to be negligence to warrant extreme punishment of dismissal froms ervice and observed as udner in paras 10 and 11:

"10. It is also further stated in the same judgement that he High Court/Tribunal while exercising the pwoer of judicial review, cannot normally substitute its own conclusion on penalty and impsoe some other penalty. If the punsihment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplianry authority/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself in exceptional and rare cases impose apporpriate punishment with cogent reasons in support thereof.

11. xxx xxx xxx"

5.2 Mr. Pujara has relied upon a decision of this Court passed in Special Civil Application No.1209/1992 on 8th December 2000. In that case the concerned officer was working with Dena Bank. A chargesheet was issued to him making allegations against him that he has committed various irregularities in sanctioning and disbursing various loans thereby violating bank's norms and not following the rules. After considering the facts and circumstances of the said case this Court held as under:

"In the aforesaid view of the matter, this petition is partly allowed. The findings of the Inquiry officer and of the disciplinary authority, holding the petitioner guilty for the charges levelled against him are not disturbed. However, the order passed by the disciplinary authority dismissing the petitioner from the service of the respondent bank dated 19.1.1990 at page 23, and confirmed in appeal and in review referred to hereinabove, are quashed and set aside. The matter is remanded to the reviewing authority i.e. General Manager (C&C) of the respondent Bank for passing appropriate order with respect to the quantum of punishment. The said authority shall be at liberty to decide and impose any penalty upon the petitioner except the penalty of dismissal, removal or termination of service. It would be open to the said authority to consider the period between the date of dismissal and the date of actual reinstatement as "leave without pay". In any case, the petitioner shall be appropriately appointed int he same cadre at any place on or before 1.1.2001. The petitioner shall not be entitled to salary or other allowances between the date of dismissal and the date of actual effective reinstatement. However, as said above, his pay shall be notionally fixed as ont he date of dismissal and it shall be calculated from year to year and it shall be decided as to what would be his salary and allowances payable tot he petitioner ont he date of his actual reinstatement. The petitioner shall be paid pay and allowances accordingly with effect from the actual date of reinstatement. In the facts and circumstances of the case, there shall be no order as to costs. Rule is made absolute accordingly."

In the above case also, which is similar to the facts of the present case, this Court was of the opinion that the punishment imposed upon the petitioner is harsh and disproportionate to the alleged misconduct.

6.0 Mr. Uday Bhatt, learned counsel for the respondents relied upon a decision of the Supreme Court int he case of Union of India and Another Vs. G. Ganayutham, reported in (1997)7 SCC 463 wherein it is held that the Court would not interfere with the administrator's decision unless it was ilegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or

moral standards.The Court would also not go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator.

7.0 I have heard the learned counsel for the respective parties extensively and gone through the entire report of the Inquiry Officer wherein evidence of the department has been discussed at length. On going through the Inquiry Report, I am of the opinion that the Inquiry Officer has fully and properly scrutinized the relevant material before him before recording the findings on the charges levelled against the petitioner. Reasonable opportunity was afforded to the petitioner during the course of inquiry.

7.1 On going through the order of the disciplinary authority, it is quite clear that the disciplinary authority has simply referred the report of the Inquiry Officer and has passed the order of dismissal. It appears that no reason has been mentioned in the order as to why the disciplinary authority selected penalty of dismissal against the petitioner. Rules show that other penalties could also be imposed. This can be gathered from Rule (4) which provides for minor and major penalties, which reads as under:

"Minor Penalties:

(a) censure
(b) withholding of increments of pay with or without cumulative effect.
(c) withholding of promotion.
(d) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the bank by negligence or breach of orders.

Major Penalties:

(e) reduction to a lower grade or post or to a lower stage in a time scale.

(f) compulsory retirement.

(g) removal from service which shall not be a disqualification for future employment.

(h) dismissal, which shall be ordinarily be a disqualification for future employment."

This shows that dismissal is the extreme penalty, which could be imposed on the delinquent.

7.2 It is very clear that the disciplinary authority is required to consider the pros and cons with respect to the quantum of punishment to be inflicted upon the delinquent on the charges proved against the person concerned. In this context it would be useful to refer to a decision in the case of Yakub Ahmed Patel Vs. Ahmedabad Municipal Corporation & Anr (1997(1) GLH 591). There, the dismissal resulted for negligence in duty by an employee whow as in service for 32 years. He had seven years to serve before retirement. There it has been held that the penalty of dismissal was harsh and disproportionate to the charge of negligence and the dismissal was converted into compulsory retirement to avail the employee of retiral benefits for his long service.

7.3 In another decision of this Court in the case of Narayan S. Shinde Vs. Union of India & Ors (1997 (1) GLH 66), the disciplinary proceedings resulted into dismissal from service on the ground of negligence in duty. There the delinquent had an unblemished past service record and, therefore, penalty of dismissal was held to be disproportionate. The matter was remanded to the appellate authority to decide what appropriate penalty should be given to the petitioner for proved negligence.

7.3 Learned counsel for the respondents relied upon a decision in the case of Union of India and Another Vs. G. Ganayutham, reported in (1997)7 SCC 463 wherein it is held that the Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural improporiety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. Mr. Bhatt has therefore submitted that this Court may not interfere with the impugned order.

8.0 As a result of the aforesaid discussion, in the present case I find that there is almost total non-application of mind with respect to the quantum of punishment. The disciplinary authority has not pointed out even by a single sentence as to why the penalty of dismissal has been selected.

8.1 The authorities were also required to consider that there was no finding that there was dishonest

intention or dishonest act on the part of the petitioner at any point of time. It is not the case of the respondent that the petitioner had pocketed some amount after advancing the loan to the concerned loanees. It is nobody's case that the petitioner had committed some faults in the past. Therefore, it was not just and proper to ignore the past record.

8.2 In absence of any adverse past record, the petitioner could not have been lightly dismissed from the service on the aforesaid charges. Thus, considering facts that there was no allegation or finding about dishonesty on the part of the petitioner and that the petitioner had not pocketed any amount in connection with the disbursement of loan coupled with the fact that there was no past adverse record against the petitioner, I am of the opinion that these aspects were required to be properly considered and I find that the disciplinary authority and the appellate authority have failed in properly considering the said aspects of the case while selecting punishment of dismissing the petitioner. Therefore, though I agree with the findings of the Inquiry officer that the petitioner was guilty of the charges levelled against him on page 113 (except nos.3 and 6), I find that the penalty imposed upon him is not in proportion to the charges levelled against the petitioner. At the most the petitioner should have been awarded a lighter punishment than the punishment of dismissal.

9.0 Learned Advocate for the respondents has submitted that this Court is not sitting as a Court of Appeal, and therefore, the question of quantum of punishment cannot be reopened in this petition when this Court is exercising its power under Article 226 of the Constitution of India.

10.0 It is a matter of discretion to select a particular punishment to be imposed having regard to the facts and circumstances, the charge proved against the delinquent, his past records, etc. In that view of the matter, I am of the opinion that it would be in the fitness of things to leave the question of quantum of punishment to the discretion of the respondent authority for taking appropriate decision with respect to the quantum of punishment.

10.1 For this purpose, the order in question is required to be quashed and the petitioner is required to be reinstated. If the petitioner is reinstated, the effective reinstatement should be with prospective

effect. Considering the misconduct of the petitioner, in my view, the petitioner should not get any backwages also, since there is no work done by him for all these years. At the same time, notional pay of the petitioner would be required to be fixed from the date of dismissal and there should be subsequent calculation of his pay and allowances, including periodical increments admissible to him as per the rules and regulations of the bank and actual payment of salary and allowance would be required to be made to the petitioner from the date of actual reinstatement.

11.0 In the result, the petition is partly allowed. The findings of the Inquiry Officer and of the disciplinary authority, holding the petitioner guilty for the charges levelled against him are not disturbed (except nos.3 and 6). However, the order passed by the Disciplinary Authority dismissing the petitioner from the service of the respondent bank dated 6.12.2000 and the order of the Appellate Authority dated 17.2.2001 as also the communication dated 27.2.2001 are hereby quashed and set aside.

11.1 The matter is remanded to the concerned authority for passing appropriate order with respect to the quantum of punishment. The said authority shall be at liberty to decide and impose any penalty upon the petitioner except the penalty of dismissal, removal or termination of service. It would be open to the said authority to consider the period between the date of dismissal and the date of actual reinstatement as "leave without pay".

11.2 In any case the petitioner shall be reinstated in his original cadre and he shall be appropriately appointed in the same cadre at any place on or before 1.9.2004. The petitioner shall not be entitled to salary or other allowances between the date of dismissal and the date of actual effective reinstatement. However, his pay shall be notionally fixed as on the date from dismissal and it shall be calculated from year to year and it shall be decided as to what would be his salary and allowances payable to the petitioner on the date of his actual reinstatement. The petitioner shall be paid pay and allowances accordingly with effect from the actual date of reinstatement. If the petitioner is not reinstated with effect from 1.9.2004, then he will be entitled for salary from that day. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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